



Billing Code 4910-59-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA—2016-0084]

Amendments to Highway Safety Program Guidelines

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments, highway safety program guidelines.

SUMMARY: Section 402 of title 23 of the United States Code requires the Secretary of Transportation to promulgate uniform guidelines for State highway safety programs. The National Highway Traffic Safety Administration (NHTSA) is seeking comments on one (1) new guideline that reflects program methodologies and approaches that have proven to be successful and are based on sound science and program administration. The new guideline is No. 9 Distracted and Drowsy Driving. NHTSA believes the new guideline will provide more accurate, current and effective guidance to the States regarding distracted and drowsy driving. The guideline will be made publicly available on the NHTSA website.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER PUBLICATION IN FEDERAL REGISTER]**.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Docket Management Facility, M-30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

- *Fax:* (202) 493-2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** at 65 FR 19477 FR 19477, April 11, 2000, or you may visit <http://www.regulations.gov>.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Ms. Carole Guzzetta (202) 366-3665, Office of Impaired Driving and Occupant Protection, NHTSA, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC, 20590. Email: carole.guzzetta@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 402 of title 23 of the United States Code requires the Secretary of Transportation to promulgate uniform guidelines for State highway safety programs. As the highway safety environment changes, it is necessary for NHTSA to update the guidelines to provide current information on effective program content for States to use in developing and assessing their traffic safety programs. These guidelines reflect the best available science and the real-world experience of NHTSA and the States in developing and managing traffic safety program content. NHTSA will update the guidelines periodically to address new issues and to emphasize program methodologies and approaches that have proven to be effective in these program areas.

The guidelines offer direction to States in formulating their highway safety plans for highway safety efforts that are supported with section 402 grant funds, as well as safety activities funded from other sources. The guidelines provide a framework for developing a balanced highway safety program and serve as benchmarks by which States can assess the effectiveness of their own programs. NHTSA encourages States to use these guidelines and build upon them to optimize the effectiveness of highway safety programs conducted at the State and local levels.

The guidelines emphasize areas of nationwide concern and highlight effective countermeasures. As each guideline is updated or created, it will include the date of its revision or development.

NHTSA has developed a new guideline on distracted and drowsy driving, No. 9, to address these growing problems. This new guideline will help States develop plans to address distracted and drowsy driving. In 2014, ten percent of fatal crashes, 18 percent of injury crashes, and 16 percent of all police-reported motor vehicle traffic crashes were reported as distraction-affected crashes. These proportions have remained stable over the past five years of reported data. In 2014, there were 3,179 people killed and an estimated additional 431,000 injured in motor vehicle crashes involving distraction-affected drivers. Ten percent of all drivers 15 to 19 years old involved in fatal crashes were reported as distracted at the time of the crashes. This age group has the largest proportion of drivers killed in the age range who were distracted at the time of the crashes. Lastly, in 2014, there were 520 non-occupants, such as pedestrians and bicyclists, killed in distraction-affected crashes¹. The limitations of these data are described in an April 2016 Traffic Safety Facts Research Note (DOT HS 812 260)².

Current estimates range from 2 percent to 20 percent of annual traffic deaths attributable to driver drowsiness. According to NHTSA, annually on average from 2009 to 2013, there were over 72,000 police-reported crashes involving drowsy drivers, injuring more than an estimated 41,000 people, and killing more than 800³. By using a multiple imputation methodology, the AAA Foundation for Traffic Safety estimated that 7 percent of all crashes and 16.5 percent of

¹ National Center for Statistics and Analysis. (2016, April). *Distracted Driving 2014*. (Traffic Safety Facts Research Note, DOT HS 812 260). Washington, DC: National Highway Traffic Safety Administration. Available at <http://www-nrd.nhtsa.dot.gov/Pubs/812260.pdf>

² National Center for Statistics and Analysis. (2016, April). *Distracted Driving 2014*. (Traffic Safety Facts Research Note, DOT HS 812 260). Washington, DC: National Highway Traffic Safety Administration. Available at <http://www-nrd.nhtsa.dot.gov/Pubs/812260.pdf>

³ National Center for Statistics and Analysis. National Highway Traffic Safety Administration Fatality Analysis Reporting System (FARS) and National Automotive Sampling System (NASS) General Estimates System (GES).

fatal crashes involved a drowsy driver⁴. This estimate suggests that more than 5,000 people died in drowsy-driving-related motor vehicle crashes across the United States last year. Research conducted in 2012 by the AAA Foundation for Traffic Safety showed drivers ages 16-24 were the most likely to report having fallen asleep while driving within the past year⁵. Finally, the AAA Foundation's 2015 Traffic Safety Index reported that nearly all drivers (97.0%) view drowsy driving as a serious threat to their safety and a completely unacceptable behavior; however, nearly 1 in 3 (31.5%) admitted to driving when they were so tired that they had a hard time keeping their eyes open at some point in the past month⁶.

It is important that States begin to address the problems of distracted and drowsy driving. This guideline is designed to help policymakers with decisions about how best to address these growing issues.

All the highway safety guidelines are on the NHTSA website, in the Highway Safety Grant Management Manual, and on the Traffic Safety page at <http://www.nhtsa.dot.gov/nhtsa/whatsup/tea21/tea21programs/>.

II. Public Participation

How do I prepare and submit written comments?

⁴ Tefft, B. C. (2012). Prevalence of motor vehicle crashes involving drowsy drivers, United States, 1999-2008. *Accident Analysis & Prevention*, 45(1): 180-186.

⁵ 2012 Traffic Safety Culture Index (2013, January). Washington, DC: AAA Foundation for Traffic Safety. Available at www.aaafoundation.org/sites/default/files/2012TrafficSafetyCultureIndex.pdf

⁶ 2015 Traffic Safety Culture Index (2016, February). Washington, DC: AAA Foundation for Traffic Safety. Available at www.aaafoundation.org/sites/default/files/2015_TSCI.pdf

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your primary comments cannot exceed 15 pages (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your primary comments. There is no limit on the length of the attachments. Please submit your comments to the Docket by any of the methods outlined under ADDRESSES.

How can I be sure that my comments were received?

If you submit your comments by mail and wish the Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, the Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter

setting forth the information specified in our confidential business information regulation (49 CFR part 512).

Will the agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a final guideline (assuming that one is issued), we will consider that comment as an informal suggestion for future guideline action.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the Docket Management Facility by going to the street address given above under **ADDRESSES**. The Docket Management Facility is open between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays. You may also read the materials placed in the docket for this document (e.g., the comments submitted in response to this document by other interested persons) at any time by going to <http://www.regulations.gov>. Follow the online instructions for accessing the dockets.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

In consideration of the foregoing, NHTSA proposes new Guideline 9, to read as follows.

HIGHWAY SAFETY PROGRAM GUIDELINE No. 9

DISTRACTED AND DROWSY DRIVING

Each State, in cooperation with its political subdivisions and tribal governments, and other parties as appropriate, should develop and implement a comprehensive highway safety program, reflective of State demographics, to achieve a significant reduction in traffic crashes, fatalities and injuries on public roads. This highway safety program should include a distracted and drowsy driving component that promotes safe driving practices and educates drivers as to the serious consequences of driving distracted or drowsy. This guideline describes the components that a State program should include and the criteria that the program components should meet. Given the multidisciplinary nature of the highway safety problem, implementation of a comprehensive distracted and drowsy driving program requires coordination among several agencies and organizations.

Distracted and drowsy driving have many issues in common: both are difficult to measure and observe; it is challenging to establish data collection to provide actual numbers of fatalities and injuries. Moreover, enforcement of these unsafe driving behaviors is challenging for law enforcement, further contributing to the difficulty in assessing the magnitude of the problem. Additionally, both behaviors result from lifestyle choices, which take them beyond driving and transportation issues.

I. PROGRAM MANAGEMENT

Each State should conduct data analysis to identify the nature and extent of its distracted and drowsy driving problems. Each State should have centralized program planning,

implementation and coordination to establish realistic goals and objectives for the State's program, and to implement projects to reach these goals. A State distracted and drowsy driving program should:

- Conduct regular problem identification and evaluation activities to determine the scope of the distracted and drowsy driving problems in the State and guide the development of countermeasures;
- Establish performance targets to guide progress in reducing distracted and drowsy driving problems;
- Prioritize key populations for educational efforts to prevent the causes of distracted and drowsy driving crashes;
- Identify key messages that need to be conveyed to various populations to prevent distracted and drowsy driving;
- Provide leadership, training and technical assistance to other agencies and local programs and projects addressing these issues;
- Identify stakeholders/partners to help the program reach established goals and objectives; and
- Encourage participation in designated distracted and drowsy driving prevention campaigns, such as the annual Distracted Driving month activities.

II. MULTIDISCIPLINARY INVOLVEMENT

Distracted and drowsy driving cut across many disciplines. For example, being fatigued affects health, overall performance and mood. It can be the result of lifestyle choices, a physical condition or medication. Distraction goes beyond driving, as many individuals are engaging in

distracted walking and biking as well. Therefore, program efforts should align as both a public health and a transportation issue. Following are recommended groups that should be involved in efforts to reduce distracted and drowsy driving:

- Public Health and medical professionals;
- Driver education and licensing;
- Non-profit organizations;
- Community safety organizations;
- Businesses and fleet employers;
- Law enforcement and public safety (including EMS and Firefighters);
- State agencies, as appropriate;
- Media and communications (including social media) outlets;
- Academic/research organizations; and
- Engineering and technology partners.

III. LEGISLATION, REGULATION AND POLICY

Each State should enforce all traffic laws and regulations, including any with a focus on distracted and drowsy driving. States should work with other State agencies and private sector partners to establish policies directed at

- prohibiting the use of wireless/electronic communication devices while driving on work-related business, whether in company or personal vehicles; and

- preventing drowsy driving while on work-related business, whether in company or personal vehicles. States should work with relevant employers to provide strategies to assist with scheduling shift changes that provide for improved sleep.

With respect to distracted driving, each State should enact and enforce laws prohibiting the use of wireless/electronic communications devices while driving. At a minimum, the law should:

- Prohibit a driver from using (e.g., talking, dialing, browsing, texting⁷) a wireless/electronic communications device while driving;
- Make the violation a primary offense;
- Establish a minimum fine for a violation of the law; and
- Prohibit a driver from texting through a wireless/electronic communications device while stopped in an active traffic lane.

With respect to drowsy driving, in the absence of specific legislation, States may be able to use existing statutes addressing violations such as reckless driving, lane changes, and weaving to identify drowsy drivers and cite, as appropriate. States should enact and enforce laws prohibiting drowsy driving.

IV. LAW ENFORCEMENT

Each State should ensure that State and community distracted and drowsy driving programs include a law enforcement component. States should provide guidance and support to:

⁷ “Texting” is defined as reading from or manually entering data into a personal wireless communications device, including doing so for the purpose of SMS texting, emailing, instant messaging, or engaging in any other form of electronic data retrieval or electronic data communication. (Federal Register / Vol. 81, No. 99 / Monday, May 23, 2016 / Rules and Regulations, p. 32590)

- Develop protocols and training for law enforcement to identify the signs associated with distracted and drowsy driving and how the established laws in the State can and should be enforced;
- Develop protocols and training for law enforcement in recognizing the involvement of distraction and drowsiness in motor vehicle crashes;
- Ensure that police crash reports include designations for driver distractions and driver drowsiness/fatigue as contributory factors to crashes;
- Identify locations where drowsy driving crashes are most likely to occur and conduct enforcement efforts, as appropriate;
- Conduct regular enforcement, as well as high visibility enforcement, to address distracted driving and drowsy driving;
- Consider a special task force to deal exclusively with crash investigations thought to be the result of distracted and drowsy driving;
- Coordinate with educational and engineering activities;
- As needed, update the State's crash reporting form to be Model Minimum Uniform Crash Criteria (MMUCC) compliant with regard to distracted and drowsy driving codes; and
- Establish appropriate internal policies to limit distraction and institute fatigue management programs for law enforcement and other emergency personnel.

V. HIGHWAY AND TRAFFIC ENGINEERING

Including a highway and traffic engineering component can be especially important in drowsy and distracted driving crashes. Each State should consider a network level crash analysis

or review of policy and standards to ensure the benefits of shoulder and center rumble strips placed on appropriate roads and work with local/State policymakers to have them installed. States should also consider improvements to the safety and availability of safe roadway rest stops to allow for rest and/or time to make phone calls, etc. States should include improved lighting uniformity at rest stops; this provides an environment where drivers may feel it is safer to stop and rest.

VI. COMMUNICATION PROGRAM

Each State should ensure that State and local programs contain a comprehensive communication component to support program and policy efforts, inclusive of social media and other relevant mediums that resonate with target audiences. The communication program should coordinate with law enforcement, businesses, health/medical, school- and college-based programs, and media outlets to share safety messages and campaign information.

Communication programs and materials should be language and culturally relevant, and should address issues such as:

- Risks associated with distracted and drowsy driving;
- Signs and symptoms of distracted driving;
- Signs and symptoms of drowsy driving, including medicines and sleep disorders;
- Types of distractions beyond talking on a cell phone and texting, such as eating and drinking, using a GPS, grooming, etc.;
- Risks associated with distracted walking and bicycling;
- Countermeasures for dealing with distraction and drowsiness while driving;

- Laws and enforcement of laws, as appropriate; and
- Use of special events such as nationally recognized safety and injury prevention weeks to highlight the risks and dangers of distracted and drowsy driving.

VII. DRIVER EDUCATION AND LICENSING

Younger drivers are at risk for both distracted and drowsy driving. As such, each State should coordinate distracted and drowsy driving information and outreach plans using educational and other collateral materials, and include issues of distracted and drowsy driving in licensing programs (including Graduated Driver Licensing), both in classroom and behind the wheel. Each State should include information on distracted and drowsy driving in the driver licensing manual and driver licensing test questions.

VIII. EVALUATION

Both problem identification and evaluation of distracted and drowsy driving crashes can be difficult. Often, a surviving driver may be reluctant to admit having been distracted or drowsy following a crash. However, each State can promote effective evaluation by:

- Supporting detailed analysis of police crash reports involving distracted and drowsy drivers;
- Evaluating the effectiveness of educational and communication programs by measuring behavior, knowledge, and attitude changes;
- Conducting and publicizing statewide surveys of public knowledge and attitude about distracted and drowsy driving;
- Conducting and publicizing observational surveys of driver distraction;
- Using available data to identify at-risk populations; and

- Ensuring that evaluation results are used to identify problems, plan new programs and improve existing programs and strategies.

Authority: 44 U.S.C. Section 3506(c)(2)(A)

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Associate Administrator

Research and Program Development

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